Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-266

SYLVAS JOHN SCHLAX,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District.

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Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District.

The petitioner, SYLVAS JOHN SCHLAX, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the California Court of Appeal, Fourth Appellate District, to which a hearing was denied by the California Supreme Court on May 30, 1979.

Opinion Below.

The opinion of the California Court of Appeal, Fourth Appellate District is unreported and is printed for the convenience of the court in Appendix A attached hereto.

Jurisdiction.

The petition for hearing was denied by the California Supreme Court on May 30, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Questions Presented.

Petitioner's Fourth Amendment rights to be free from unreasonable governmental intrusion were violated when the warrant for the search of his residence was issued on the basis of an affidavit consisting of illegally seized evidence, unreliable hearsay, and material omissions.

Constitutional Provisions Involved.

The Fourth Amendment to the United States Constitution provides that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The Fourteenth Amendment protects this right from infringement by state entities.

Statement of the Case.

On June 27 and 28, 1977, the Grand Jury of San Bernardino County, State of California, heard testimony from 15 witnesses and from this testimony returned a three-count indictment. Appellant, SYLVAS JOHN SCHLAX, was accused in Count I of the Indictment, conspiracy to manufacture, compound and sell a controlled substance in violation of the California Health and Safety Code, Section 11379. Appellant SCHLAX was accused of committing three overt acts pursuant to and for the purpose of carrying out the object and purpose of the conspiracy.

OVERT ACT 9

Between January 1, 1976, and July 24, 1976, BUD NYKEIL and SYLVAS JOHN SCHLAX, aka PETE SYLVAS, purchased chemicals from the Los Angeles Chemical Company, Los Angeles, California.

OVERT ACT 12

On or about November 16, 1976, SYLVAS JOHN SCHLAX, aka PETE SYLVAS, possessed dies for a pill press.

OVERT ACT 13

On or about September 1, 1976, SYLVAS JOHN SCHLAX, aka PETE SYLVAS, rented property on Old Canyon Road for the purpose of manufacturing amphetamines.

On June 28, 1977, bench warrants were ordered issued for all defendants, including SYLVAS GENE SCHLAX.

On July 1, 1977, appellant SCHLAX waived formal arraignment and reading of information, and the bench warrant previously ordered issued was quashed.

On July 25, 1977, appellant SCHLAX filed a Motion to Quash Search Warrant Nos. 2085, a, b, c, d and 3003 (directed to the home of defendant SCHLAX, on Avalon Street) pursuant to California Penal Code, Section 1538.5, and also a Motion to Set Aside the Indictment Pursuant to California Penal Code, Section 995.

On October 4, 1977, appellant SCHLAX filed a Motion for Pretrial Discovery directed to the District Attorney for the County of San Bernardino.

On October 14, 1977, appellant SCHLAX filed a Motion to Suppress Evidence Pursuant to California Penal Code, Section 1538.5.

On November 11, 1977, appellant SCHLAX filed a Motion to Suppress Identifications of himself, which were made by various witnesses.

On November 16, 1977, appellant SCHLAX filed a Motion to Join in co-defendants' motions.

On December 6, 1977, the District Attorney for the County of San Bernardino filed points and authorities in opposition to defense motions filed prior to November 28, 1977.

On January 16, 1978, a hearing was held on all pretrial motions before the Honorable DON. A. TURNER. The Motion to Dismiss the Grand Jury Indictment, joined in by all defendants was denied. On motion of the District Attorney, Overt Act No. 9 was ordered stricken without the agreement of appellant SCHLAX.

On January 17, 1978, the Motion to Suppress Evidence obtained as a result of the arrest of RANDALL BENJAMIN and the Motion to Quash the Search Warrant of the residence of appellant SCHLAX were denied.

On January 23, 1978, the motion to suppress the proceeds of the search warrant at the residence of appellant SCHLAX was denied. Motion to Quash the Search Warrant of the premises on Locust Street was granted.

On January 24, 1978, the court found that there was probable cause to issue the search warrant for the premises on Cajon Boulevard. Motion to suppress evidence obtained in the search warrant of the Cajon Boulevard premises was denied. Motion concerning deliberate or reckless misstatements by the affiant to the search warrants was denied. Motion to quash the search warrant for the Seventh Street Address, Colton, was denied. Motion to suppress evidence obtain from the Colton search warrant was denied.

On January 25, 1978, the motion to suppress evidence of pill press was denied. Motion to suppress information from informant MARTIN was denied. Motion to suppress information over the telephone at Locust Street was granted. Second motion to suppress evidence seized pursuant to Avalon search warrant (premises of appellant SCHLAX) was denied.

On January 26, 1978, appellant SCHLAX's motion to reconsider ruling on motion to quash search warrant and evidence at Avalon Street premises was denied. Motion to dismiss pursuant to Penal Code, Section 995, was granted as to DUDE PETTEGREW and Overt Act No. 10 was ordered stricken. Appellant SCHLAX's motion to dismiss pursuant to Penal Code, Section 995 was denied. Defendant's motion for continuance of jury trial for purpose of seeking a writ was denied.

On February 1, 1978, appellant SCHLAX pled guilty per plea bargain to conspiracy to manufacture, compound and sell controlled substances, to wit: amphetamines. Bail on appeal was set at $10,000.00, and appellant SCHLAX was released on bond.

On March 16, 1978, appellant SCHLAX was pronounced guilty of conspiracy to manufacture, compound and sell controlled substance, to wit: amphetamines, and Overt Act No. 12 was admitted and found true. Appellant was committed to State Prison for the term prescribed by law.

On March 16, 1978, appellant SCHLAX filed a Notice of Appeal in open court, the ground being denial of the Motion to Quash and Suppress under Section 1538.5, California Penal Code.

On August 25, 1978, appellant SCHLAX filed an Application to Augment the Record on Appeal. Said Application was granted on September 12, 1978.

On August 28, 1978, appellant SCHLAX filed his Opening Brief.

The decision of the Court of Appeal was filed in this action on March 20, 1979, affirming the judgment of the trial court in favor of respondent.

Statement of Facts.

The facts are subdivided into two headnotes for greater clarity.

1. The Arrest and Detention of Randall R. Benjamin.

On October 6, 1976, at approximately 11:00 p.m., Colton police officer LUPEAR was patrolling East Valley Boulevard. The officer noticed a parked automobile with a driver inside.

Because the officer was "curious", he engaged the driver in conversation. The driver answered all of the officer's questions.

The Ford was allowed to leave, but officer LUPEAR continued to watch it as it moved a short distance away, where the officer effected a traffic stop and ordered the driver (RICHARD A. BENJAMIN) out. A pat-down was conducted with negative results. Back-up units were requested, and BENJAMIN was detained until they arrived. No particular crime was being investigated other than driving without lights (California Vehicle Code §24250).

Officer LUPEAR noted that the address on BENJAMIN's license differed from that given orally earlier, and BENJAMIN was questioned about prior arrests. Thereafter, BENJAMIN consented to a search of his car, which was negative.

Officer LUPEAR directed his back-up officers to search the entire area while he then began writing a traffic citation. Approximately 70 feet away, a package was found. BENJAMIN was arrested for possession of amphetamines for sale. (California Health and Safety Code, Section 11378).

BENJAMIN purportedly waived his right against self-incrimination and gave the police information which led to the police obtaining search warrants for, *inter alia,* 3403 Avalon Street, Riverside, California, which is the residence of petitioner SCHLAX.

2. Facts Relating to the Search Warrant of Petitioner Schlax's Residence.

The following is a summary of facts contained in the affidavit of Detective JAMES BRYAN of the San Bernardino County Sheriff's Ofifce, Narcotics Division, in support of Search Warrant No. 3003 directed at 3403 Avalon Street, Riverside, Cr 'ifornia.

On July 24, 1976, FRANK NYKIEL was mortally injured in an explosion and fire at an Almond Avenue residence in Fontana, California. Subsequent investigation revealed that NYKIEL was operating a laboratory for the manufacture of amphetamine powder.

In August, 1976, NYKIEL's close friend, RUTH BURK, contacted the Sheriff's Office, and was referred to Detective JAMES BRYAN. RUTH BURK told BRYAN that she had spent a considerable amount of time at NYKIEL's residence between February, 1976, and July, 1976.

RUTH BURK stated that she was introduced to a man named JOHN WILSON, who was alleged to be NYKIEL's "partner in the illegal trafficking of drugs and/or narcotics".

affidavit in support of the search warrant did not establish probable cause to believe that contraband or evidentiary matter would be found at that address.

The motion to suppress the information conveyed over the telephone to the Locust Street address was granted, but the Honorable DON A. TURNER found that the officers acted properly in the following up of the phone call and concluded that any further developments were the result of an investigation independent of the Locust search. Thus, the motion to quash the pill press was denied as was the motion to suppress the evidence obtained from MARTIN commencing with the meeting in which the pill press was seized.

According to affiant, Detective BRYAN, telephone toll information indicated calls were made to the number subscribed to by SYLVAS JOHN SCHLAX from that of FRANK JOHN NYKIEL during 1976. This information was procured as a result of the execution of a search warrant for the Pacific Telephone Company.

On October 26, 1976, an officer contacted one MANNIE MENDOZA of the Los Angeles Chemical Company in Downey, California, who identified appellant, SYLVAS JOHN SCHLAX, and JOHN WILSON from a number of photographs of suspects in the present case. The witness MENDOZA told that officer he had seen SCHLAX and WILSON on two occasions purchasing chemicals.

The affiant further states that on October 28, 1976, officers observed the residence at 3403 Avalon, at which time they noted that the residence was on top of a hill and that there were "military-type vehicles to the rear of the residence".

On November 16, 1976, Search Warrant No. 3003 was issued by PATRICK MORRIS, Judge of the Superior Court, County of San Bernardino.

The affiant testified that he added the following paragraph to his affidavit in support of Search Warrant 2085(a) in the presence of the judge who eventually signed the warrant:

> "Affiant attests that the informant is a long time resident of the area, has no past arrest, has knowledge of criminal activity, there is no indication of actual involvement in criminal activity."

This same statement was repeated in the Affidavit to Search Warrant 3003 for the Avalon address.

The affiant testified that he added the paragraph because the judge stated there was a question in his mind and then asked for some clarification as to whether BURK was actually a co-conspirator or a citizen-informant.

At the time the affiant added this paragraph, he was aware of the following information, but he did not reveal any of it to the issuing magistrate: BURK once took $40,000.00 out of a safe to give to someone for BUD NYKIEL, BURK was aware of BUD NYKIEL's involvement in drug trafficking when she completed the $40,000.00 transaction and assumed that was the substance of the transaction; BURK had used whites or pills and BUD NYKIEL had sold them to her; BURK had never actually seen pills sold, but had merely concluded that was occurring from observing money transactions and the carrying of packages from the residence; BURK's ex-husband had been a pill smuggler; BURK's initial involvement with amphetamines began in approximately 1967.

REASONS FOR GRANTING THE WRIT.

1. The Petitioner's Fourth Amendment Right to Be Free From Unreasonable Governmental Intrusion Was Violated When the Warrant for the Search of His Residence Was Issued on the Basis of an Affidavit Consisting of Illegally Seized Evidence, Unreliable Hearsay, and Material Omissions.

A. Petitioner Schlax Has Standing to Raise the Illegality of Benjamin's Detention.

In *Alderman v. United States,* 394 U.S. 165 (1969) the court denied standing in a situation wherein petitioners were attempting to assert an independent constitutional right of their own to exclude relevant and probative evidence because it was seized from another in violation of the Fourth Amendment. Typically, a defendant does not have standing to suppress evidence uncovered via a violation of a third party's Fourth Amendment rights. However, taking the police action one step further than merely introducing into evidence against one person what was illegally seized from another, SCHLAX asserts that a defendant *does* have standing when aforementioned illegally seized evidence combined with illegally obtained statements from said third party are used to aid in the acquisition of a search warrant for his residence, thereby involving his Fourth Amendment rights.

The line from the tainted evidence and statements obtained from BENJAMIN is direct, and their use to search SCHLAX' residence is a far greater intrusion than simply serving as evidence in a criminal prosecution. The facts at hand are an extension of the situation in *Rakas v. Illinois,* 99 S.Ct. 421 (1978) and constitute a severe intrusion upon SCHLAX' residential sanctity

and SCHLAX must, therefore, have standing to assert the Fourth Amendment violations endured by BENJAMIN. Otherwise, there would be nothing to deter police officers in their investigation of crime from unreasonably and unconstitutionally approaching those believed to be on the fringes of crime, hoping thereby to obtain information that would lead to the issuance of a search warrant for one or more residences, secure in the knowledge that the owners would have no judicial recourse against such gross police behavior.

Rakas v. Illinois, supra, reiterates that Fourth Amendment rights are personal rights, and only those whose Fourth Amendment rights are violated may beneft from its protection. However, the intrusion incurred by the execution of a search warrant is extreme, and unconstitutionally issued search warrants, for example, those based on illegally seized evidence, violate the Fourth Amendment rights of those persons for whose premises the warrants are issued.

The question to be asked, as stated in *Rakas, supra,* at 429, is whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. The instant case presents us with an affirmative answer to the above question, as the search warrant, issued partly on the basis of evidence obtained pursuant to an illegal detention, did indeed constitute a violation of SCHLAX' Fourth Amendment rights. Consequently, SCHLAX does have standing to contest the illegal detention of BENJAMIN.

B. The Detention of Randall Benjamin Was Illegal and the Fruits Thereof May Not Be Used to Support the Search Warrant.

Before an officer may stop a pedestrian or motorist for questioning under circumstances short of probable cause for arrest, he must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *Terry v. Ohio,* 392 U.S. 1, 22 (1968). A mere hunch or subjective suspicion will not justify a temporary detention, nor will the good faith of the officer. *Terry v. Ohio, supra.*

In the present case, Officer LUPEAR investigated the reason for RANDALL BENJAMIN's presence in an automobile parked on Valley Boulevard at approximately 11:00 p.m. The officer proceeded eastbound on Valley Boulevard and noted in his rear view mirror that the lights of the vehicle came on as it was being driven westbound on Valley. The officer made a U-turn and followed the vehicle as it turned northbound on Mt. Vernon and then eastbound on "G" Street. The officer activated his police vehicle's red lights. He noted that BENJAMIN's vehicle had come to a stop on "G" Street, but then it pulled forward approximately 50 feet. (The officer's report stated the driver did not appear to be making an attempt to flee.) At this point, Officer LUPEAR ordered BENJAMIN out of his vehicle and searched his person for weapons.

Although the officer eventually cited BENJAMIN for driving without his vehicle's lights on, it was understood at the preliminary hearing that this was not the justification for the stopping of the vehicle, but merely an afterthought. Thus, the detention was *not* based upon the traffic violation that occurred after

the red lights were activated, but rather upon the officer's unfounded suspicion that something else was afoot. However, there were absolutely no specific and articulable facts which indicated criminal activity, aside from BENJAMIN's presence in an automobile on Valley Boulevard at 11:00 p.m., and his later driving away from that location.

In the recently decided case of *Delaware v. Prouse,* 47 U.S.L.W. 4323 (March 27, 1979) the court was faced with a situation similar to the instant case, despite the officer's testimony that he observed neither traffic nor equipment violations, and that he made the stop only in order to check the driver's license and registration. This Court there held that,

> except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automoble is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the vehicle are unreasonable under the Fourth Amendment, . . . and persons in automobiles may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers. *Id.,* at 4327.

Similarly, here, where Officer LUPEAR stopped BENJAMIN'S vehicle because he was curious, and not because he suspected any criminal activity, his actions were unreasonable under the Fourth Amendment.

In *United States v. Brignoni-Ponce,* 422 U.S. 873 (1975), this Court stated that except for border stops or roving patrols, police officers may "stop vehicles

only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who are illegally in the country." *Id.*, at 884.

Analogizing random stops for illegal aliens to stops predicated on no more than "curiosity", petitioner SCHLAX asserts that the stop of BENJAMIN, based as it was on curiosity, violates Fourth Amendment proscriptions on unreasonable seizures.

The only facts that Officer LUPEAR knew at the time he stopped the vehicle were the following: It was 11:00 p.m., which is not a late or unusual hour, and that BENJAMIN drove away shortly after being questioned as to his purpose. These do not raise a rational suspicion of criminality. Therefore, the detention, predicated as it was on nothing more solid than curiosity, contravenes the holdings in both *Terry v. Ohio, supra,* and *Delaware v. Prouse, supra,* and constitutes a violation of BENJAMIN's Fourth Amendment rights.

Since major, integral parts of the affidavits supporting the search warrant involved in this case were derived from the illegal detention and search of BENJAMIN, all items seized pursuant thereto must be suppressed as the "fruit of the poisonous tree". *Wong Sun v. United States,* 371 U.S. 471 (1963).

C. The Search Warrant Was Issued in Violation of the Fourth Amendment as There Was No Probable Cause to Support It.

The affidavit was not sufficient under the Fourth Amendment to support a search warrant because it was on information illegally seized from RANDALL BENJAMIN, *supra,* as well as information from an informant of doubtful validity.

Aguilar v. Texas, 378 U.S. 108 (1964) stated the requirements for relying on information supplied by an informant: ". . . the magistrate must be informed of some of the underlying facts from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant was "credible" or his information "reliable". *Id.*, at 114.

The information which Detective BRYAN relates primarily consists of second and third-hand hearsay statements of persons whose reliability is untested and whose credibility is doubtful at best. For example, on page 2 of the affidavit, Detective BRYAN states that the primary informant, RUTH BURK, related to him that FRANK NYKIEL had indicated at some unspecified time that a man named "PETE" was the "money" behind an organization involved in the illicit manufacture of amphetamines. In order to corroborate the statement, BRYAN states that BURK told him she had actually seen this man named "PETE" and on each occasion, he was with another person suspected of being involved in criminal activity, circumstances, and other facts that would indicate more concretely that the statement was based on personal knowledge of the informant BURK.

Furthermore, page 2 of the affidavit states that the informant, RUTH BURK had "a number of conversations" with one SHERRY RIGDON, whom she had observed purchasing amphetamines from FRANK NYKIEL. According to this, SHERRY RIGDON told the informant, RUTH BURK, that "PETE SILAS" was involved in illegal drug activity and that he lived

on top of a hill where "military-type vehicles" could be seen parked.

Petitioner SCHLAX submits that SHERRY RIGDON, who apparently was criminally involved in purchasing contraband, is a classic example of an untested and unreliable informant under the two-prong test enunciated in *Aguilar, supra,* and reiterated in *Spinelli v. United States,* 393 U.S. 410 (1969). Detective BRYAN could not and did not point to any factors to establish her reliability. Nor, could he show sufficient facts to support his conclusion that SHERRY RIGDON had any personal knowledge of the details contained in her statement. It is elementary that channeling the information through the informant, RUTH BURK, does not cure this constitutional deficiency or cleanse the statements of the taint of unreliability. In fact, the information becomes even more constitutionally suspect due to its hearsay nature.

In addition, the magistrate was not informed whether the affiant had even used this informant before, or under what circumstances MS. BURK established her credibility. There is no mention of having received information from this informant in the past which ultimately led to arrests and convictions. Without some foundation of reliability, the informant's tips must be viewed with objective skepticism and may not support a finding of probable cause to search without independent corroboration of criminal activity.

The only statement offered by the affiant which purported to reflect upon the informant's credibility was "that the informant is a long-time resident of the area, has no past arrest, has knowledge of criminal activity, there is no indication of actual involvement

in criminal activity". (A.S.W. 3003.) Detective BRYAN added this statement when the magistrate questioned him regarding the informant's reliability.

However, it was revealed in BRYAN's testimony that BURK was not a citizen-informant. Petitioner asserts that the candor of BRYAN's testimony at trial does not violate the adverse effect of the misstatement on the magistrate's inference drawing process at the time of the issuance of the search warrant. Petitioner refers to the fact that the misstatement may have led the magistrate to erroneously conclude that BURK was a citizen-informant. Since a citizen-informant needs little, if any corroboration, if the magistrate issued the search warrant under the mistaken belief that the information was adequately corroborated, the misstatement was material.

Further, the affidavit to Search Warrant No. 3003 states that BURK witnessed "numerous sales of amphetamines to a large number of people. . . ." However, at the preliminary hearing the affiant revealed that BURK never told him that she had actually seen pills sold, but had instead merely assumed that that was what she was observing. The magistrate may have erroneously concluded that BURK had personal knowledge of narcotics sales, thus satisfying the first prong of the test in *Aguilar v. Texas, supra.* This, in turn, may have led him to erroneously issue Search Warrant No. 3003. The court below, in failing to traverse the search warrant, contravened the recent decision of *Franks v. Delaware,* 438 U.S. 154 (1978) wherein it was stated that it would be an "unthinkable imposition upon a magistrate's authority if a warrant affidavit, revealed after the fact to contain a deliber-

ately or recklessly false statement, were to stand beyond impeachment" and "a flat ban on impeachment of veracity could denude the probable cause requirement of all real meaning". *Id.*, at 168.

Allowing such false statements of an affiant regarding the reliability of an informant to go unremedied deprives the individual for whose premises the search warrant is issued of his Fourth Amendment right to be free from unreasonable searches and seizures. Were law enforcement agents not required to sufficiently corroborate the information received from criminal participants, the *Aguilar* test of informant reliability would be unsatisfied and Fourth Amendment protections would be undermined. Therefore, the court below was in error in failing to traverse the warrant, especially in view of the inconsistencies revealed during the affiant's testimony.

Conclusion.

In view of the foregoing reasons, it is respectfully urged that this petition for certiorari should be granted.

RON MINKIN,
Attorney for Petitioner.

APPENDIX A.

Opinion.

Court of Appeal, Fourth District, Second Division, State of California.

People of the State of California, Plaintiff and Respondent, v. John Louis Wilson, Sylvas John Schlax and Dude Pettegrew, Defendants and Appellants. 4 Crim. 9885 (Super. Ct. No. CR-34012).

Filed Mar. 20, 1979.

APPEALS from judgments of the Superior Court of San Bernardino County. Judgments affirmed.

Richard A. Walton for Defendants and Appellants John Louis Wilson and Dude Pettegrew.

Ron Minkin for Defendant and Appellant Sylvas John Schlax.

George Deukmejian, Attorney General, A. Wells Petersen and Gary W. Schons, Deputy Attorneys General, for Plaintiff and Respondent.

Defendants Wilson, Pettegrew and Schlax appeal from judgments of conviction following pleas of guilty to and sentencing on Count I of an indictment charging conspiracy to manufacture, compound and sell a controlled substance (amphetamine) in violation of Health and Safety Code section 11379. The questions raised on this appeal relate to the trial court's denial of numerous motions to suppress under Penal Code section 1538.5. If any of the defendants' contentions on appeal are sustained, under *People v. Hill* (1974) 12 Cal.3d 731, 769 (overruled on another point in *People v. DeVaughn,* 18 Cal.3d 889, 896, fn. 5), defendants are entitled to elect to withdraw their guilty pleas and proceed with a trial.

The trial court sat as a finder of fact. The judge passed on the credibility of witness, weighed the testimony and drew factual inferences. The trial court's findings on factual matters, express or implied, are to be upheld if supported by substantial evidence. Although the issue of reasonableness is one of law, the trial court's conclusion in that regard should not be challenged lightly. On appeal, however, it is up to the appellate court to measure the facts as found by the trial court against the constitutional standard of reasonableness. (*People v. Lawler* (1973) 9 Cal.3d 156, 160.) On appeal it is presumed that the trial court impliedly found every fact to be true to support its ruling. (*People v. Castaneda* (1969) 1 Cal.App.3d 477, 484.)

No issue has been raised by the plaintiff regarding defendants' standing to question the legality of any of the search and seizure activities of the police.

I

SEARCH WARRANT NO. 2085(a)

On October 7, 1976, detective James Bryan from the San Bernardino sheriff's office obtained a search warrant, No. 2085(a), for four separate locations: (1) a dwelling on Locust St. in Fontana (Wilson), (2) a dwelling on Seventh St. in Colton (Schreiner), (3) a dwelling on Eleventh St. in Bloomington (Pettegrew), and (4) three buildings referred to as the Cajon Blvd. premises (laboratory).

The affidavit in support of the search warrant disclosed that on August 24, 1976, Frank Nykiel suffered fatal injuries in an explosion and fire at a residence on Almond Ave. in Fontana. Items found after the explosion indicated that the Almond Ave. premises

were being used in the manufacture of amphetamine powder.

Following Nykiel's death, an informant (later identified as Ruth Burk), contacted the police and ultimately was interviewed extensively by Bryan. Burk, a close friend of Nykiel, had observed him selling amphetamines from the Locust Ave. address in Fontana from 1972 through June 1976. Among the purchasers was Dude Pedigrew (Pettegrew). Burk told Bryan of being introduced to Wilson in early 1976 by Nykiel, who told her that Wilson had just been released from prison. Burk further said that Nykiel told her of his partnership with Wilson in the manufacture and sale of amphetamines and that Wilson wanted Nykiel to set up a clandestine lab for manufacturing amphetamine powder.

Nykiel also told Burk that there were to be four partners in this clandestine operation—Nykiel, Wilson, Pete Silas and Donald Schreiner. Among the purchasers of amphetamines from Nykiel prior to 1976 was Schreiner. Burk related other statements from Nykiel as well as from Nykiel's friend Sharron Rigdon, expanding on Nykiel and Wilson's association in the manufacture of amphetamines subsequent to March 1976.

Bryan obtained information from the Colton Police Department relative to the arrest of Randall Richard Benjamin on October 6, 1976, for possession of a large quantity of amphetamine tablets. According to Benjamin, Schreiner was the source of the tablets. From the interview with Bejamin and a surreptitiously recorded conversation between Benjamin (who was wired for sound) and Schreiner, it was learned that there was a clandestine lab for manufacturing amphetamines somewhere between San Bernardino and Victor-

ville. Schreiner related to Benjamin that Pettegrew had been at the lab for 20 hours and that he (Schreiner) was going to the lab. Benjamin told of picking up the pills which he possessed when arrested from Schreiner's residence at the Seventh St., Colton address.

Police surveillance covered Schreiner leaving his Seventh St. address, going to Pettegrew's residence on Eleventh St. in Bloomington and thence to the Cajon Blvd. premises. Schreiner parked his van between the two residence buildings at Cajon Blvd. Schreiner had described to Benjamin the location of the clandestine lab as being on a lot with two dwellings adjacent to each other—one being empty and the other containing the lab.

"Benjamin further stated that Schreiner had introduced him to a "Johnny" and mentioned "Pete"—both members of the organization. He said that "Pete" was not his "real name."

The affidavit related in corroboration of Benjamin's statements, the circumstances of a sale of amphetamines ("controlled" by the police) by Benjamin to one Cowart.

II

SEARCH WARRANT NO. 3003

On November 16, 1976, Detective Bryan obtained a search warrant for 3403 Avalon, Riverside. He also obtained arrest warrants for defendants Wilson and Schlax.

In addition to most of the information related in the affidavit for search warrant No. 2085(a), Bryan related that Burk had told of being introduced to "Pete Silas" at the Locust St. residence when Nykiel lived there. Nykiel had told her of his partnership

with Wilson, "Pete Silas," and Schreiner and that "Pete" was the money behind the organization. Sherry Rigdon also told Burk of Pete's involvement, stating that Pete lived in the Riverside area in a large house on top of a hill and that there were several military-type vehicles around the house. Burk told of her daughter, Cherri Rankin, meeting Pete Silas also. Rankin identified Pete Silas to be defendant Schlax from a photostat of his picture on his driver's license.

An interview with Jo Anne Allen corroborated other information concerning the involvement of Nykiel, Wilson, and Pettegrew in the manufacture and sale of amphetamines.

The date of the explosion of Nykiel's laboratory was correctly fixed as July 24, 1976, instead of August 24.

After relating the information obtained through the arrest of Benjamin, Bryan told of executing search warrant No. 2085(a) and catching Schreiner at the Cajon Blvd. property operating a pill press and producing amphetamine tablets in the hundreds of thousands. At Pettegrew's residence on Eleventh St., Bloomington, several thousand amphetamine tablets were seized. At Locust St. documents implicating Wilson were seized and a phone call from Jerry Keith Martin was intercepted which led to Martin's arrest and ultimate cooperation with the police. At the time of Martin's arrest, he had a pill press in his van. Among others, Martin further implicated Wilson and "Pete." "Pete" was to purchase the pill press for $10,000. Martin was apprehended in the process of delivering it.

Return on a search warrant served on the Pacific Telephone Co. revealed many calls to and from Schlax'

Avalon address and other locations involving Wilson and Nykiel.

An employee of L.A. Chemical Co. identified Nykiel and Schlax as purchasers of chemicals during the first half of 1976.

Inspection of the Avalon address in Riverside revealed one house atop a hill, surrounded by a six-foot high chain link fence. Schlax was observed working in the back yard where a number of "military-type vehicles" were parked.

III

The defendants now appealing joined in each other's motions to suppress evidence and traverse the above search warrants, as well as the search warrant issued to secure records of the Pacific Telephone Co. The trial court granted defendants' motion to suppress relating to the dwelling at Eleventh St. in Bloomington (Pettegrew's) and the house on Locust St. in Fontana (Wilson's). The court further ordered suppressed the phone call intercepted by the police at Locust St., since it had held that the entry was without probable cause and unlawful.

After six days of testimony and argument, the court denied defendants' remaining motions. These matters are now to be addressed.

IV

The defendants contend that the information in the affidavits for search warrants, *supra,* obtained from Benjamin should be suppressed because of lack of probable cause in his detention, search, and arrest. Benjamin's statements to the police precipitated the issuance of search warrants for Locust St., Seventh St., Eleventh St. and Cajon Blvd.

On October 6, 1976, at approximately 11 p.m., Colton Officer Lupear was on patrol in a marked police unit. He saw a parked car in front of a closed gas station with lights out and only the driver in the car. There were another gas station and two motels some distance down the street. Lupear knew of recent burglaries at the gas stations and an armed robbery at one of the motels.

Lupear drew his unit alongside the parked car and secured a residence address from the occupant. The occupant also stated he was waiting for a friend who was to come from a motel 200 yards away. The driver appeared nervous and evasive in answering Lupear.

Lupear, after securing the car's license number, proceeded eastward and then circled back. He noticed that the car's lights came on and it started to proceed westerly. No one else had entered the vehicle.

Maintaining surveillance, Lupear saw the car turn first north into a residential area, then east onto a dead end street. Lupear activated his lights as he saw the car make the last turn and, upon making the turn himself, saw the car parked adjacent to a dirt field with its lights out. The car then, with lights out, pulled ahead approximately 50 feet. Lupear stopped, ordered the driver out, made a pat-down search for weapons, and (with the driver's consent) briefly searched the car, finding nothing. The driver's California driver's license disclosed Benjamin's name and an address different from that first given to the officer. Benjamin told Lupear that he had had a prior arrest for armed robbery.

Since it was a cold evening and the window on the passenger's side was down, Lupear suspected that

Benjamin had thrown something from the car. A follow-up officer searched the area where Benjamin's car had been and found a bag with a large quantity of amphetamine tablets where the car had first stopped. While the search of the area proceeded, Lupear began citing Benjamin for operating his car without headlights. Lupear testified that the whole procedure from the stop to finding the contraband lasted only a little over five minutes.

Benjamin cooperated with the police and gave them the information related in the affidavits for the search warrants.

The trial court analyzed the testimony concerning Benjamin at some length and properly concluded tht the detention, pat-down search and arrest were legal. Lupear had a rational suspicion that Benjamin may have been engaged in a burglary or robbery. The hour, location, evasive and nervious behavior—the *totality* of circumstances—clearly led Lupear to entertain a rational suspicion that some activity out of the ordinary was taking place and that it was related to crime. (*People v. Gale* (1973) 9 Cal.3d 788, 798.)

Since Lupear entertained a prudent fear for his safety, particularly before the back-up unit arrived, the pat-down and consensual search of the car were valid. (*People v. Mosher* (1969) 1 Cal.3d 379, 394.)

The fact that Lupear started to cite Benjamin for driving 50 feet down the street without headlights might have become important if the detention had been prolonged. But a total detention from the stop to the arrest of a little over five minutes was reasonable.

Benjamin expected no privacy regarding the bag of pills he had thrown into the dirt field through the passenger window.

V

Defendants sought to traverse the warrants because of a statement which Detective Bryan affixed in his own handwriting to the affidavit for No. 2085(a) and included in the typed portion of the affidavit for No. 3003.

Of informant Burk, Bryan printed on page 2 of the affidavit 2085(a) for the benefit of the magistrate, "Affiant attests that the informant is a long time resident of the area, has no past arrest, has knowledge of criminal activity. There is no indication of actual involvement in criminal activity."

Did Bryan intentionally, or recklessly mislead the magistrate with the latter quoted sentence? The first sentence was true, including Burk's knowledge of criminal activity; this knowledge was amply demonstrated in her statements to Bryan as related in the affidavits. It was equally clear from Bryan's testimony that she was not a citizen informant. Since this was conceded in the trial court, there is no need to detail her involvement in the use and sale of amphetamines, particularly during her long association with Nykiel. Generally, as Bryan testified, her use of amphetamines was sporadic and her assistance to Nykiel in a sale was in transferring $40,000 in cash for him as his trusted friend. Bryan testified that he did not intentionally try to mislead the magistrate—that he had been up some 23 hours working on the case when he obtained search warrant No. 2085(a)—that he attempted to phrase the handwritten statement on the affidavit the best he could.

Aside from the statements from Burke which Bryan typed in the affidavit and which clearly indicated that

she was something less than the ordinary citizen informant, it is apparent that her reliability was corroborated by the other information, particularly from Benjamen.

The trial court ruled that any omission Bryan may have made concerning Burk's past was not deliberate or reckless. In *Morris v. Superior Court* (1976) 57 Cal.App.3d 52, the court found "inescapably" that the officer hid his mistrust of an informant by deliberately attempting to manufacture reliability and intentionally concealing facts. This, of course, substantially interfered with the magistrate's decision-making process. In the case at bench, the trial court considered the affidavit with the additional information which he had about Burk and found that her reliability was sufficiently corroborated. At most, Bryan's omission was a reasonable error not made in bad faith. Burk's statements need not be excised. (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 97.)

An analysis of the information Bryan had through Burk and Benjamin clearly met the legal requirements of corroboration to establish reliability. (*People v. Lara* (1967) 67 Cal.2d 365, 374-375; *Aguilar v. Texas* (1964) 378 U.S. 108.)

VI

Defendants attack the search warrants because of the hearsay statements therein. They further contend that some statements constitute multiple hearsay. These objections particularly are aimed at Burk's statements to Bryan of things Nykiel told her and Benjamin's conversations with Schreiner. As to the latter, it should be recalled that some of the Benjamin-Schreiner talks were recorded by the police.

Hearsay statements must be specific and factual. There must be a sufficient showing that the incriminating facts from the informer were gained through personal knowledge, nor rumor. Further, hearsay on hearsay is not to be totally disregarded; it can be used as a part of the total picture. A common sense approach, not a hypertechnical one, is to be used in reading affidavits for search warrants. (*People v. Nadell* (1972) 23 Cal.App.3d 746, 753, 755.)

The hearsay statements in the affidavits for search warrants met those standards.

VII

Defendants contend that the pill press and the information obtained from Jerry Martin must be suppressed since his arrest and subsequent cooperation with law enforcement was the fruit of the poisoned tree—the unlawful entry of the Locust St. residence and the unlawful interception of incoming phone calls.

At approximately 6 p.m. on October 7 (the hour when all of the initial warrants were served), the police complied with Penal Code section 1531 in entering the Locust St. residence. Among other incoming phone calls answered inside by the police (without revealing their identity) was one from Jerry Martin—known to the police from previous contacts. Martin mentioned a deal that was supposed to occur with Johnny and Pete. Pretending to be an associate of Johnny and Pete, an officer obtained Martin's phone number from him. After leaving Locust St., the officers used the number to call Martin and arrange a meeting. At the meeting, the police discovered a large pill press in Martin's van. Following Martin's arrest and his obtaining counsel, he cooperated with the police. Defendant

Schlax asserts that Martin's information, as it supports the search warrant No. 3003 on Avalon in Riverside, invalidates that search.

According to *Wong Sun v. United States* (1963) 371 U.S. 471, 487, the doctrine of the fruit of the poisoned tree may be avoided by a showing either that the evidence would have been acquired by independent means, or that the connection between the illegal search and the after acquired evidence was so attenuated so as to dissipate the taint.

Officer English, who overheard the telephone conversation with Martin on the phone at Locust St., had known Martin a long time, recognized his voice, but had nothing immediately pressing about which to contact Martin. The trial court characterized English's concern about Martin as having "nothing on the front burner right at that particular moment." Further the trial court refused to "speculate" that English would have gotten Martin involved in the conspiracy case without the phone call, but found that Martin's involvement was "attenuated to the point where it is admissible." The arrest, search and statements relating to Martin were "triggered by the phone call, not totally based on the phone call." It should be noted that Martin's complete cooperation with the police occurred some two weeks after his arrest, after he was represented by counsel and thereafter became a prosecution witness.

As the trial court pointed out, this presents a case in which the officers acted without fault. They obtained a search warrant, valid on its face, from a magistrate who passed on the affiant's allegations for probable cause; they complied with Penal Code section 1351 in entering the Locust St. residence. Since no one was home, they answered the phone when it rang.

Plaintiff suggests that the trial court could have applied a test of reasonable probability to see whether the first alternative of *Wong Sun*—inevitable acquiring of the evidence by independent means—applies and come up with the same answer. It is true that the trial court's use of *Lockridge v. Superior Court* (1970) 3 Cal.3d 166, factually cannot be reconciled completely with this case. In *Lockridge* an illegally seized gun led to connecting the defendant with a crime, but the courtroom identification of him was held not to be tainted. The purpose of the law was adequately served by suppressing the gun.

People v. Superior Court (Tunch) (1978) 80 Cal. App.3d 665, held that, although the inevitable discovery rule will not be applied to subvert the safeguards of the exclusionary rule, where officers act in good faith the deterrence rationale of the exclusionary rule loses its force. The inevitable discovery rule applies only to evidence that, with a reasonably strong probability, would have been discovered if the claimed illegality had not occurred. (*Id.*, at pp. 681-682.)

It is well to note that in the case at bench, English testified that he felt he had enough information on Martin to establish probable cause to arrest him. The phone call had meaning only because of prior legally obtained evidence.

It makes as much sense to consider the good faith of the police in applying "attenuations" as "inevitable discovery."

The "but for" rule of causation is not the only answer to a "taint" case. There must be such connection between the two transactions that they cannot be treated separately. If the earlier illegality ". . . at worst . . .

merely contributed to such discovery, the exclusionary rule does not apply." (*People v. Eastmon* (1976) 61 Cal.App.3d 646, 653.)

The intervening independent acts of Martin making the phone call and meeting the police with the pill press are acts distinguishable from the initial illegality—the unlawful entry on Locust St. Furthermore, the court's finding of attenuation is supported by the course of events following Martin's apprehension—his ultimate decision with advice of counsel to become a state's witness.

VIII

In addition to other attacks on search warrant No. 2085(a) as it relates to the laboratory on Cajon Blvd., defendants contend that the warrant was invalid for lack of specificity because three buildings or dwelling units were involved and because the police failed to comply with Penal Code section 1531 in entering the premises.

At 6 p.m. on October 7, 1976, the police located themselves outside the three units consisting of a house and a duplex-like building. The officers announced that they were from the sheriff's office and had a search warrant. After waiting 30 to 45 seconds with no response, simultaneous forcible entries were made. Inside one of the duplex-like units Schreiner was noisily operating a pill press turning out thousands of amphetamine tablets. Apparently he had not been watching a closed circuit TV monitoring system set up to cover the front gate.

The affidavit for search warrant 2085(a) describes an out-building and two adjacent dwellings, one empty and the other used as the clandestine lab. The information regarding occupancy came from Schreiner to Benjamin to the police. Detailed descriptions came after police surveillance.

It is clear that the affidavit expressed probable cause to believe that contraband was in one of the buildings. An inference could also be made that two of the locations were probably empty. The affidavit may be used to clarify any ambiguity in the description in the warrant. (*People v. Grossman* (1971) 19 Cal.App.3d 8, 12.)

In *People v. Coulon* (1969) 273 Cal.App.2d 148, a search warrant was issued for all buildings on a ranch including "persons in residence" for narcotics. The allegation in that case was that the occupants were engaged in a communal type of living. The court said that the affidavit must be tested in a common sense and realistic manner, especially since it is normally drafted by non-lawyers (in the case at bench, Bryan) in the pursuit of a criminal investigation. (*Id.*, at p. 153.)

For all practical purposes, at Cajon Blvd. there was but one location with the three buildings surrounded by one fence. One of the three contained contraband. In view of the allegations in the affidavit, the place to be searched was adequately described.

Unreasonable delay in responding to the officers who have announced their identity and purpose is equivalent to a refusal of admittance. In *People v. Abdon* (1972) 30 Cal.App.3d 972, five or six seconds were not enough. In *People v. Elder* (1976) 63 Cal.App.3d 731, the court held that the passage of 20 seconds (". . . not a flash of time . . .") suggests that no one is going to answer. Thirty to

forty-five seconds surely pass muster under Penal Code section 1531. The officers were justified in making forcible entries.

IX

Defendants, especially Schlax, contend that search warrant No. 3003 served on the Avalon St. address in Riverside did not properly describe the place to be searched and that the officers did not comply with Penal Code sections 844 and 1531 in entering the premises to serve the search and arrest warrants. They also contend that the search warrant No. 3003 is invalid because the affidavit contained material which the trial court ordered suppressed from Locust St. and Eleventh St.

Bryan testified that prior to going to the Avalon address, he was aware that a woman and possibly Wilson might be there in addition to Schlax. Bryan knew of Schlax' arrest record, including an arrest for assault with a deadly weapon. He further had information that Schlax had six registered firearms and information from Burk that Schlax had a large amount of ammunition and weapons—even possibly land mines.

Approximately 15 officers gathered to serve the warrants. Bryan approached the front gate as the woman (Linda Schlax) entered with her children. She locked the gate from the inside and told Bryan she would inform her husband that Bryan invited him to come out and talk to Bryan. After she drove up the hill and entered the house, the officers entered and drove up the hill. There is a conflict in testimony between Linda Schlax and the officers concerning the occurrences at the house. Apparently Mr. Schlax was busy corralling his dogs (Doberman Pinchers) to keep them

from being shot. The trial court adopted the version of Officer Koleszar, who told of attempting to keep Mrs. Schlax outside for the reading of the search warrant. This included an entry to escort her back into the yard during the reading. Also, a brief entry of the premises was made to insure that Wilson was not present. The entry and search occurred after the search warrant was read to Mr. and Mrs. Schlax outside the house.

It is clear from reading the affidavit that the results of the suppressed searches at Locust St. and Eleventh St. can readily be excised and the remaining material is sufficient for probable cause. (*People v. Cook* (1978) 22 Cal.3d 67, 94.)

It would have been ridiculous for Bryan and his cohorts to attempt to shout the requirements of Penal Code sections 844 and 1531 from the front gate to the house was sufficient. Officer Koleszar's description Their compliance with those sections before searching the house was siffucient. Officer Koleszar's description of what occurred at the house, as adopted by the trial court, showed substantial, good faith compliance with Penal Code sections 844 and 1531.

In measuring the legality of the officers' actions, it should be remembered that they not only had a search warrant, but also arrest warrants for Schlax and Wilson.

X

On November 4, 1976, Detective Bryan obtained a search warrant to secure records of toll calls relating to certain telephone numbers from the Pacific Telephone Co. The numbers were those relating to Eleventh St., Locust St., Seventh St., a residence rented by

Wilson on Tamirand St., and Schlax' residence on Avalon.

In addition to the information of Burk, the affidavit includes information obtained from Benjamin and Martin as well as the results of the service of search warrant No. 2085(a).

Again, excision of the materials suppressed by the trial court (*People v. Cook, supra,* 22 Cal.3d 67) plus the application of the inevitable discovery rule (*Wong Sun v. United States, supra,* 371 U.S. 471) clearly shows that the toll call records were legally obtained. By use of the street numbers and a criss-cross directory, all of the phone numbers would have been easily obtained.

XI

Defendant Schlax, early in the proceeding, filed a motion to suppress the identifications of him from photographs (as disclosed in the affidavits for search warrants) as being impermissibly suggestive and contary to due process. There is no citation in his brief, or the plaintiff's, to any place in the clerk's or reporter's transcript where the trial court ruled on this motion. The following comments assume that the motion was denied.

Following Schlax' plea of guilty, no certificate of probable cause was obtained. (Pen. Code, § 1237.5.) His appeal was taken under Penal Code section 1538.5 (m). (See also Cal. Rules of Court, rule 31(d).)

It appears that Schlax' motion deals with possible in-court identification as a matter of due process. To that extent, as in the assessment of the voluntariness of an admission or confession, the trial court's ruling

is not properly before this court. To the extent that defendant relates identification procedures to search and seizure questions and to the extent that the trial court passed on such procedures and questions based solely on the affidavits, the trial court's denial of the motion is amply supported. (See *People v. DeVaughn* (1977) 18 Cal.3d 889.

APPENDIX B.

Clerk's Office, Supreme Court, 4250 State Building. San Francisco, California 94102.

May 30, 1979.

I have this day filed Order HEARING DENIED. In re 4th Circuit. No. 9885, Peo. vs. Wilson.

Respectfully,

G. E. Bishel
Clerk

APPENDIX C.

Affidavit in Support of Search Warrant No. 2085.

In the Municipal Court District, ... Division, County of San Bernardino, State of California.

State of California, County of San Bernardino—ss.

Personally appeared before me this 7th day of October, 1976, James M. Bryan, Detective

James M. Bryan, Detective

WHO on oath, makes complaint and deposes and says: that he is now and has been for the last eight years, a duly authorized Deputy Sheriff of the County of San Bernardino, State of California, assigned to the narcotics division for the past 4 years to investigate the illegal trafficking of narcotics in the County of San Bernardino. In the last two years as an investigator in the narcotics division, he has specialized in the investigation of major conspiracy violations in the field of narcotics.

Premises to be Searched

1. The premise located at 8587 Locust Street in Fontana, county of San Bernardino, State of California. Premise further described as being a yellow woodframe dwelling with white trim having a gray composition shingle roof. Dwelling further described as being located on the east side of Locust, facing west, having a detached garage on the northeast corner of the property. Dwelling further described as having the common numbers 8587 next to the front door of the dwelling.
2. The premise located at 1153 Seventh Street, Colton, County of San Bernardio, State of California. Premise further described as being a white stucco

dwelling with green trim on windows. Dwelling further described as having a brown composition roof with a detached garage located on the south side of the dwelling.

3. The premise located at 18569 Eleventh Street, Bloomington, County of San Bernardino, State of California. Dwelling further described as being yellow stucco with brown wooden trim. Premise further described as having an attached garage on the west side of the dwelling, being yellow stucco with brown trim. Dwelling further described as having the common number of 18569 located on the garage trim.
4. The premise located southwest of Cajon Boulevard approximately 1-6/10 mile of the intersection of Kenwood Avenue and Cajon Boulevard. Premise further described as having two dwellings and one out-building located on the property. Dwelling number one further described as a one-story woodframe, beige stucco with dark brown wooden trim, further described as having faded green asphalt composition roof. Second dwelling located west and adjacent to dwelling number one, further described as one-story woodframe, being beige stucco having dark brown wooden trim, also having a faded green asphalt composition roof. Dwelling number two further described as having what appeared to be a new addition on the rear or southmost portion of the dwelling. The third building described as being a one-story woodframe having an off-white stucco siding with a gray asphalt composition roof.

Property to be Seized

1. Personal correspondence between the persons named in the affidavit.
2. Personal phone books showing phone numbers, addresses and names of persons named in the affidavit.
3. Documents with computations indicatives of narcotics transactions.
4. The materials used for the purpose of manufacturing and/or selling and packaging of amphetamines.

Factual Information

Affiant, James M. Bryan, attests that affiant has read all investigative reports, interviewed all witnesses and informants and contacted all investigating officers, prior to preparation of the information contained within this affidavit.

Affiant attests tha the affiant has received investigative reports indicating that on August 24, 1976, that an explosion and fire took place at 8668 Almond Avenue in Fontana and that a Frank John NYKEIL was involved in the explosion and fire and subsequently lost his life resulting from injuries received.

Investigative reports indicate that numerous items of paraphernalia, including chemicals, cooking materials, test tubes, chemical formulas and books on chemistry were located at the residence of 8668 Almond Avenue, Fontana, after the explosion and fire.

Affiant also attests that reports indicate that the San Bernardino Sheriff's Crime Lab gathered evidence at the scene of the fire and explosion and an opinion formed by Criminalist John Davison after examination

of all the evidence indicates that the chemicals and equipment located at this particular residence were in fact significant and necessary items in the manufacturing of amphetamine powder.

Affiant also attests that investigative reports indicate statements were made at the hospital emergency room by Frank John NYKEIL on August 24, 1976 prior to his death to the hospital personnel questioning them, "if he was going to be arrested". Affiant attests that these reports also indicate that this question was asked by Frank John NYKEIL on a number of occasions to the hospital staff.

Information from Informant

Affiant attests that the latter part of September, 1976 that the affiant has extensively interviewed an informant regarding the explosion and fire that killed Frank John NYKEIL in Fontana on August 24, 1976 and covered in these extensive interviews were also information regarding the associates of Frank John NYKEIL.

Informant states that the informant became aware of Frank John NYKEIL, known to the informant as Bud NYKEIL'S activities and involvement in the sales of amphetamines in 1972, when the informant observed NYKEIL selling quantities of amphetamines at his residence at 8587 Locust Avenue in Fontana.

Informant states that the informant was at the residence at 8587 Locust, residence of Bud NYKEIL at least three times a week beginning in 1972 through June of 1976 and on a number of occasions while at the residence observed Bud NYKEIL selling amphetamines to different people.

Informant also stated that on many occasions has been at the residence of Bud NYKEIL on Locust Avenue

and saw Bud NYKEIL sell to Dude and Beverly PEDIGREW, quantities of amphetamine tablets.

Informant also states that in February or March of 1976 that the informant was introduced to Johnny WILSON by Bud NYKEIL and informed by BUD NYKEIL that Johnny WILSON had just been released from state prison.

Affiant attests that the informant is a long time resident of the area, has no past arrest, has knowledge of criminal activity, there no indication of actual involvement in criminal activity.

Informant also states that Bud NYKEIL told the informant that Johnny WILSON was his partner in this transactions of selling amphetamines. Informant also states that Bud NYKEIL told the informant that Johnny WILSON had met a chemist while in state prison and that the chemist was in the Los Angeles area and was now producing amphetamine powder from chemicals supplied by Johnny WILSON and Bud NYKEIL and that the finished product was then returned to Bud NYKEIL and John WILSON for to be pressed into pills.

Informant also states that Bud NYKEIL told the informant some type of problem came up between the chemist in Los Angeles and Johnny WILSON and that John WILSON wanted Bud NYKEIL to set up a clandestine lab for the purpose of manufacturing amphetamine power.

Bud NYKEIL told the informant also that there was going to be four partners in the clandestine lab and that these partners would be one Bud NYKEIL, two Johnny WILSON, three Pete SILAS and four Donald SCHREINER.

Informant states the informant was familiar with all of these subjects and that the informant had seen each one on a number of occasions at the residence of Bud NYKEIL at 8587 Locust Avenue, starting in 1972 through the latter part of 1976. Informant also states that remembering one occasions where Donald SCHREINER was at the residence at 8587 Locust, Fontana, just prior to January of 1976 before the release of John WILSON from state prison, and on that occasion saw Donald SCHREINER purchase a quantity of amphetamines from Bud NYKEIL.

Informant also stated that approximately March of 1976 that the informant was at the residence of Bud NYKEIL with John WILSON and that Bud NYKEIL had told her that the chemist in L.A. had delivered a gummy substance referred to by Bud NYKEIL as an unfinished amphetamine product which the informant saw being placed on a glass and spread out and then heat lamps over top of the material. Informant states that the informant was told by Bud NYKEIL, that the product on the glass was $15,000 worth of amphetamine powder and that he, Bud NYKEIL, and John WILSON were drying the powder out.

Informant also states that on October 5, 1976, that the informant had conversation with a Sharron RIGDON, an associate and friend of Bud NYKEIL, whom the informant has seen on a number of occasions at the residence of Bud NYKEIL and has on a few occasions seen the subject Sharron RIGDON purchase quantities of amphetamines from Bud NYKEIL. Informant states that this Sharron RIGDON told the informant on October 5th that information was that Johnny WILSON went back in business and was producing large quantities of amphetamines.

Seizure of Amphetamines

Affiant attests on this date the affiant contacted Detective Jack Stratton from Colton Police Department and that Detective Stratton a police officer of the City of Colton, Police Department informed the affiant that a Randall Richard BENJAMIN was arrested on October 6, 1976, by Officer LaPeer, Police officer for the City of Colton, Police Department for possession for sale of amphetamine tablets.

Detective Stratton informed the affiant that a quantity of 100,000 amphetamine tablets were seized from Randall Richard BENJAMIN and that the suspect BENJAMIN after being arrested was later read his rights per Miranda by Officer LaPeer, police officer, City of Colton.

Affiant was also informed by Detective Jack Stratton that Officer LaPeer received a waiver of these rights from Randall Richard BENJAMIN and an investigative interview was taken regarding the possession of the amphetamine tablets.

Affiant also was informed by Detective Jack Stratton that Randall Richard BENJAMIN had told Detective Donegan and Detective Jack Stratton that he had delivered a different 100,000 tablets to a George B. COWART, the day before his arrest. This delivery took place at 854 W. 8th Street, San Bernardino.

Randall Richard BENJAMIN also informed Detective Donegan and Detective Stratton that he had received the pills from Donald SCHREINER and Donald SCHREINER paid him $400 to make the delivery of the amphetamine tablets.

The affiant was informed by Detective Stratton and Detective Donegan that during the course of the inter-

view with Randall Richard BENJAMIN that BENJAMIN had told them that there was a clandestine laboratory for the purpose of producing amphetamine tablets located somewhere between San Bernardino and Victorville and that BENJAMIN had been informed of this by Donald SCHREINER.

Affiant was also informed after the interview of Randall BENJAMIN that BENJAMIN agreed to go back to Donald SCHREINER under controlled conditions wearing an electronic listening device and have this conversation between BENJAMIN and SCHREINER taped showing Donald SCHREINER'S knowledge and involvement with the 100,000 tabs.

The affiant was informed by Detective Donegan and Detective Stratton that this conversation did take place under surveillance between BENJAMIN and SCHREINER and that during the course of the conversation SCHREINER told BENJAMIN that the 100,000 pills could be sold and that someone had been bugging Beverly all day. Affiant was also informed that this taped conversation contained statements by Donald SCHREINER to Randall BENJAMIN that that Dude PEDIGREW had been working for 20 straight hours at the lab and that he, Donald SCHREINER, was going to the lab and would not be back until Friday.

Affiant was also informed by Detective Donegan and Detective Stratton that Randall BENJAMIN had told them that he had picked up the 100,000 pills at 1153 Seventh Street, Colton, being the residence of Donald SCHREINER, these being the amphetamines seized by the officers and that the ones picked up and delivered the day before to COWART were also picked up at 1153 Seventh Street in Colton.

Affiant was also informed that surveillance by officers of the residence at 1153 Seventh Street, Colton, showed Donald SCHREINER leaving the residence in the early morning hours on 10/7/76 and proceeding to 18569 Eleventh Street, Bloomington, the residence of Dude and Beverly PEDIGREW.

Affiant is also informed by officers conducting surveillance that Donald SCHREINER was then surveilled from the 18569 Eleventh Street address to an area approximately 1-6/10 mile west on Cajon Boulevard from the intersection of Kenwood Avenue and Cajon Boulevard.

Affiant also attests that at a later time on 10/7/76 that the affiant observed a gray primer van parked between two residences on Cajon Boulevard, being approximately 1-6/10 miles west of the intersection of Kenwood and Cajon and that the affiant was informed by Detective Donegan that was the vehicle driven by Donald SCHREINER, determined by surveillance.

Affiant was informed by Detective Donegan and Detective Stratton that the subject Randall Richard BENJAMIN had told them that the clandestine lab had been described to him by Donald SCHREINER as being located on a lot where two dwellings were located adjacent to each other and that one was empty and the other one was used as the clandestine lab.

Affiant was also informed by Detectives Donegan and Stratton that Randall Richard BENJAMIN told them that Donald SCHREINER had introduced them to a guy named Johnny told by Donald SCHREINER that Johnny was a commercial burglar and that SCHREINER had also mentioned the name of Pete,

telling him that that was not his real name but this guy Pete and Johnny were head of the organization.

Affiant was also informed that Randall Richard BENJAMIN had told Donegan and Stratton that Donald SCHREINER had showed him a picture of a subject and called him Frank John NYKEIL or Bud NYKEIL and told him that Bud is deceased and was killed in an explosion in a clandestine laboratory in Fontana in August of '76. BENJAMIN also indicated to the officers that Bud NYKEIL was also part of the same organization of WILSON and Pete.

Controlled Delivery of Amphetamines

Affiant was informed on October 7, 1976, by Detective English that Randall Richard BENJAMIN told him that a delivery of 100,000 amphetamines was supposed to go to a George B. COWART, these being amphetamines seized when he was arrested. Detective English then informed affiant that a controlled delivery was done using an electronic listening device on a person of BENJAMIN and surveilled by officers of the Sheriff's Department. English also informed the affiant that after the controlled delivery of the amphetamines by BENJAMIN, BENJAMIN was paid $5500 by COWART, COWART was then surveilled to another location where the officers arrested him and seized the amphetamines.

As a narcotics officer for the County of San Bernardino, the affiant has participated in the investigation in excess of six major narcotic conspiracy cases and this officer has found through experience that located within the residences of the suspected co-conspirators, documents evidencing the existence of a conspiracy. Such documents include telephone numbers of co-conspirators,

correspondence between co-conspirators, maps showing specific locations and documents containing names of other co-conspirators.

The affiant attests that the above-contained information tends to show that a continuing conspiracy exists with the persons named in the affidavit to manufacture, distribute and sell amphetamines, a narcotic, in the County of San Bernardino, therefore showing a felony has been committed and is continuing to be committed in the County of San Bernardino, State of California.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Bernardino, California on October 7, 1976.

James M. Bryan

APPENDIX D.

Affidavit in Support of Search Warrant No. SW 3003.

In the Superior Court District, Central ..... [ILLEGIBLE] Division, County of San Bernardino, State of California.

State of California, County of San Bernardino—ss.

Personally appeared before me this 16th day of November 1976 James M. Bryan WHO on oath, makes complaint and deposes and says: that he has now been assigned to the Narcotics Division of the San Bernardino County Sheriff's Office for the past four years to investigate the illicit trafficking of narcotics in the San Bernardino County. Affiant also attests that he is now assigned to a special investigations unit within the Narcotics Division, the primary function being to investigate major conspiracies and the trafficking of narcotics, and has for the last two years specialized in this type of investigation.

The information contained in this affidavit is that for the purpose of securing a search warrant on the premises at 3403 Avalon, Riverside, County of Riverside, State of California, for evidence, showing on-going and continuing conspiracy in the County of San Bernardino and the County of Riverside, State of California, for the purpose of manufacturing and distributing mehtamphetamine.

INTERVIEW: WITNESS RUTH BURK

Affiant will attest that on September 30, 1976, that he interviewed the witness Ruth BURK regarding the activities of the subject Frank John NYKIEL and his associates. Affiant will further attest that the witness Ruth BURK is a long-time resident of the area, has no past arrest record, apparently has knowledge of

criminal activity, however, there is no indication of actual involvement in criminal activity.

Affiant will attest that the witness Ruth BURK told him that she has been acquainted with the subject known to her as Bud NYKIEL since 1972, and spent a considerable amount of time at the residence of Bud NYKIEL, located at 8587 Locust Street in the Fontana area. She further stated that this was particularly true in the period of time between February of 1976, and July of 1976, stating that she would be at the residence of Bud NYKIEL on Locust Street three or four days each week.

The witness Ruth BURK further stated to the affiant that in February of 1976, she was introduced to a subject John WILSON by Bud NYKIEL and was told by NYKIEL that John WILSON was his partner in the illegal trafficking of drugs and/or narcotics.

The witness Ruth BURK also told your affiant that while present at the residence at 8587 Locust Street, she has observed Bud NYKIEL and John WILSON making numerous sales of amphetamines to a large number of people, which included but not limited to the following subjects: Richard LUNSFORD, Celia CARNES, Dude and Beverly PETTEGREW, and Sherry RIGDON. The witness Ruth BURK also stated that she has heard conversation between Bud NYKIEL and John WILSON regarding the sales of drugs and had heard both subjects talking on the telephone at the 8587 Locust Street address; and the conversation on the telephone in her opinion was regarding the sale of drugs.

Witness Ruth BURK also told your affiant that she has met and seen a subject known to her as Donald

SCHREINER at the 8587 Locust Street address and has overheard conversation between him and Bud NYKIEL and John WILSON regarding the subject SCHREINER picking up a quantity of amphetamines.

Witness Ruth BURK further stated to your affiant that in the early part of 1976, that she observed a quantity of a yellow powdery substance drying under heat lamps at the 8587 Locust Street address in Fontana and was told by Bud NYKIEL at that time that it was a very good quality of methamphetamine. The witness Ruth BURK further stated to your affiant that she met a white male adult subject, introduced to her as Pete SILAS at the 8587 Locust Street address, the residence of Bud NYKIEL. She believes that this was possibly in May of 1976, and further stated that after being introduced to the subject Pete SILAS that she was told by Bud NYKIEL that he (NYKIEL) was involved in the manufacturing and sale of methamphetamine and that his partners in the operation were Johnny WILSON, Pete SILAS, and Donald SCHREINER, and, further, that the subject Pete SILAS was the money behind the organization.

The witness Ruth BURK further told your affiant that after this conversation with Bud NYKIEL that on a number of occasions she had observed at the Locust Street residence paraphernalia in the form of test tubes, plastic hoses, and other items, including chemicals, which led her to believe that there was a clandestine laboratory somewhere in the Fontana area.

The witness Ruth BURK stated to your affiant that she had a number of conversations with Sherry RIGDON, who she had observed purchasing amphetamines from NYKIEL; and Sherry RIGDON had told her that there was a subject by the name of Pete SILAS

involved with Bud NYKIEL and John WILSON in the manufacturing and sale of amphetamines and that this subject lived in the Riverside area and that he lived in a large house on top of a hill and there were several military-type vehicles around the residence.

Witness Ruth BURK further told your affiant that she was introduced to the subject Pete SILAS by Bud NYKIEL, this occurring at the residence of Bud NYKIEL on Locust Street and, also, present at that time was John WILSON and, further, she met the subject Pete SILAS on two other occasions, both times he was with the subject John WILSON. The witness also stated that her daughter, Cherri RANKIN, had also met the subject Pete SILAS.

IDENTIFICATION OF SUSPECT:
SYLVAS JOHN SCHLAX, AKA: PETE SILAS

On 10-19-76, the affiant showed to the witness Ruth BURK a photostatic copy of California drivers license #J477729, with all of the written information on the drivers license covered; and Ruth BURK made a tentative identification of the photograph as being the subject she knew as Pete SILAS; however, she stated that she could not be certain.

On 10-19-76, affiant will attest that Det. Sgt. Gene Bowlin contacted Cherri RANKIN, daughter of the witness Ruth BURK, and showed to her the photostatic copy of California drivers license J477729. With all of the printed information on the drivers license covered, the subject Cherri RANKIN identified the photograph on the drivers license as being of the person she knows as Pete SILAS.

California drivers license J477729 was issued to Sylvas John SCHALX, a white male adult 33 years, 11-22-42, 6-0, 180, brn/brn.

INTERVIEW: WITNESS JO ANNE ALLEN:

Affiant will attest that on October 15, 1976, the witness Jo Anne ALLEN was interviewed by Det. Sgt. Gene Bowlin of the Sheriff's Narcotic Division, at which time she gave the following information:

The witness Jo Anne ALLEN stated that she has been using amphetamines since 1968; and from 1970 or 1971, she has been using amphetamines on a daily basis, taking two to three tablets every three to four hours.

The witness Jo Anne ALLEN further stated that in this six-year period of time, she has purchased amphetamines on hundreds of occasions, usually retaining a portion of the amphetamine tablets purchased for her own personal use, selling the remaining portion.

The witness Jo Anne ALLEN further stated to Sgt. Bowlin that two to three years prior to his death, witness ALLEN had purchased from Bud NYKIEL amphetamines on a regular basis. Further, in the early part of 1976, she was introduced to a subject Johnny WILSON at the residence of Bud NYKIEL. Following this introduction, she on a number of occasions purchased amphetamines from Johnny WILSON and Bud NYKIEL at the residence of Bud NYKIEL on Locust Street in Fontana.

The witness Jo Anne ALLEN further stated to Sgt. Bowlin that on a number of occasions, she had a conversation with Bud NYKIEL and John WILSON at the Locust Street address regarding a pill press, stating to her that they wished to locate a pill press which they could purchase.

The witness Jo Anne ALLEN further stated to Sgt. Bowlin that she has observed a subject, Beverly PETTE-

GREW, at the residence of Bud NYKIEL on Locust Street and that she (Jo Anne ALLEN) has on a number of occasions purchased amphetamines from Beverly PETTEGREW and her husband, Dude PETTEGREW. The witness Jo Anne ALLEN also stated that she has observed Richard LUNSFORD at the residence of Bud NYKIEL, purchasing quantities of amphetamines and that she on several occasions has purchased amphetamines from the subject Richard LUNSFORD. The witness Jo Anne ALLEN also stated that she has accompanied a subject Celia CARNES to the residence of Bud NYKIEL and purchased amphetamines from Bud NYKIEL and Johnny WILSON at that location and that she (Jo Anne ALLEN) has purchased on several occasions amphetamines from the subject Celia CARNES.

CLANDESTINE LAB EXPLOSION:

Affiant will attest that he has reviewed San Bernardino County Sheriff's Department reports under DR 395144-03, which indicate that on July 24, 1976, at approximately 1130 hrs., an explosion occurred at 8668 Almond Avenue, in the Fontana area, and that injured in the explosion and fire was Frank John NYKIEL, who resided at 8577 Locust Avenue, Fontana, and, further, that the subject Frank John NYKIEL later died of injuries received in the explosion and fire.

Investigation at the location following the explosion and fire was conducted by Sheriff's Department personnel, including personnel from the San Bernardino County Sheriff's Crime Laboratory. Found at the location were large quantities of chemicals, chemical solutions, chemical glassware items, and laboratory equipment and supplies.

Your affiant will attest that he has had personal conversation with Criminalist J. Robert Davidson, who has reviewed the chemicals and laboratory equipment seized at the 8668 Almond Street address; and it is in the opinion of Criminalist Davidson that a clandestine laboratory was being operated at that location to produce methamphetamine.

ARREST AND INTERVIEW: RANDALL BENJAMIN

Affiant will attest Colton Police Department report number 76-6650, which indicates that on October 6, 1976, a Randall BENJAMIN was arrested and had in his possession 100,000 amphetamine tablets.

Your affiant will further attest that he has reviewed reports by Detective J. J. Donegan of the Sheriff's Narcotics Division regarding a subsequent interview of Randall BENJAMIN in which the subject Randall BENJAMIN told Det. Donegan that he had obtained the amphetamines from a Donald SCHREINER and that SCHREINER was operating a pill press somewhere in the San Bernardino County area, between Victorville and San Bernardino; that this pill press was capable of producing 125,000 amphetamine tablets per day.

Affiant will attest that Det. Donegan's report further indicates that Randall BENJAMIN stated that he was told by Donald SCHREINER that he (SCHREINER) was working for Johnny WILSON and another subject known as "PETE"; and, further, that the two subjects, Johnny WILSON and "PETE", were in the process of purchasing a large pill press capable of producing in excess of 600,000 amphetamine tablets per day; and that this purchase of this pill press was to take place in the near future; and that he (BENJAMIN)

had been approached by SCHREINER to operate one of the presses.

Your affiant will further attest that under the direction of Sgt. Gene Bowlin and Det. J. J. Donegan that the witness Randall BENJAMIN was wired with an electronic monitoring device and returned with the 100,000 amphetamine tablets to the residence of the subject Donald SCHREINER at 1153 7th Street in Colton and that your affiant has reviewed the tape recording obtained with the use of the monitoring device in which the subject Donald SCHREINER gave instructions to the witness Randall BENJAMIN regarding the handling of the 100,000 amphetamines and the money to be obtained from the sale of the amphetamines.

EXECUTION OF SEARCH WARRANT: (CAJON PASS AREA)

The affiant will attest that on October 7, 1976, that he personally served a search warrant signed by Judge Theodore Krumm of the San Bernardino County Municipal Court on a residence located in the Cajon Pass area of San Bernardino County and found at that location, as a result of the service of the search warrant, the subject Donald SCHREINER operating a pill press which was producing amphetamine tablets; and further seized at that location were several hundred thousand amphetamine tablets and amphetamine powder.

EXECUTION OF SEARCH WARRANT AT 18569 11th STREET, BLOOMINGTON, CA.:

Your affiant will attest that he has reviewed reports by Det. Tom Koleszar, Deputy Alex Cordova, and Deputy Mike Lewis regarding the service of a search warrant at 18569 11th Street, Bloomington, California,

the residence of Dude and Beverly PETTEGREW. The search warrant was signed by Municipal Court Judge Theodore Krumm and was executed on October 7, 1976.

Your affiant determined from reviewing the report that seized as the result of the search warrant was a quantity of amphetamine tablets, being several thousand in number.

EXECUTION OF SEARCH WARRANT AT 8587 LOCUST STREET, FONTANA, CA.:

Your affiant will attest that he has reviewed reports by Det. Patrick English and Det. Rod Denney, regarding the service of a search warrant at 8587 Locust Street in Fontana. The search warrant was served on October 7, 1976, and signed by Theodore Krumm, Judge of the San Bernardino County Municipal Court.

Your affiant determined that as a result of the review of the reports that seized at the Locust Street address were documents and correspondence with the name of John WILSON, one of the documents being a letter which contained a formula for making the precursor chemical Phenyl-2-Propanone, which is a chemical used in the manufacturing of methamphetamine.

Affiant will further attest that while Det. English and Denney were at the Locust Street address residence, that they received two phone calls—one being from a female and a second from a male. Both subjects asked for Johnny or Pete, leaving a call-back number of 825-5056. Det. Denney had a conversation with the male subject who stated that he was to do a deal with Johnny or Pete tonight and to have Johnny or Pete call him at the number of 825-5056.

ARREST AND INTERVIEW: WITNESS JERRY KEITH MARTIN

Affiant will attest that he has further reviewed reports by Det. English and Det. Denney, whereas at approximately 1820 hrs. on October 7, 1976, Det. Denney placed a phone call to 825-5056 and talked to the subject Jerry, later identified as Jerry Keith MARTIN, and arranged to meet the subject at Rancho and "C" Street in Colton and advised the subject Jerry that Pete would meet him at that location.

As a result of the phone call placed to subject Jerry, he did arrive at Rancho and "C" Street and was driving a large van truck. A subsequent search of the truck located a large multiple-stage pill press. Affiant will further attest that he has reviewed reports by Det. Sgt. Gene Bowlin who interviewed the witness Jerry Keith MARTIN on October 26, 1976, at which time subject Jerry Keith MARTIN stated the following:

Subject MARTIN stated that he is an associate of John Joseph SWETKOVICH, who is a major trafficker in amphetamines in the San Bernardino County area. He stated that he was contacted on October 6, 1976 by the subject SWETKOVICH, who instructed him to contact Johnny WILSON and attempt to sell to WILSON the large pill press for a price of $9,000.00. The witness MARTIN stated at that time the press was located in a residence in the Adelanto area and that he (MARTIN) had operated the press with the subject SWETKOVICH, producing in excess of 500,000 amphetamine tablets on one occasion.

The witness Jerry MARTIN further stated that he has been involved in transactions between John SWETKOVICH and John WILSON and Bud NYKIEL in

which the subject SWETKOVICH would trade to NYKIEL and WILSON quantities of Phenyl-2-Propanone in return for the finished product of methamphetamine powder.

The subject Jerry Keith MARTIN further stated that he did make telephone contact with the subject Johnny WILSON regarding the sale of the pill press. The subject WILSON advised MARTIN that they were interested and would contact MARTIN later if they wished to complete the transaction. The witness Jerry MARTIN also stated that in a conversation with Johnny WILSON, he was told by Johnny WILSON that if he (MARTIN) called and WILSON was not there, it was all right to talk to the subject "Pete."

The witness Jerry MARTIN further stated that he was contacted later in the day by telephone by a male subject who identified himself as "Pete." Subject "Pete" told MARTIN that they would purchase the pill press for $10,000 and that he would contact MARTIN sometime around 6 PM on October 7, 1976, to complete the transaction.

The witness Jerry Keith MARTIN further stated that in the evening hours of October 7, 1976, that he and his wife, Theresa, did place telephone calls to the Locust Street address, the former residence of Bud NYKIEL and the present residence of Johnny WILSON. The primary reason for placing the phone calls was to give Johnny WILSON or the subject "Pete" a new telephone number which they had installed at their residence on that day.

Witness Jerry Keith MARTIN further stated that he had removed the pill press from the Adelanto location and had it on a rented truck and was prepared to

deliver the press to the subject John WILSON or "Pete" at the Rancho and "C" location when he was apprehended.

PHONE TOLL INFORMATION:

Affiant will attest that he has contacted the owner of the property at 7803 Tamarind, Fontana, and determined that the rent on the property at the Tamarind Street location was paid by the subject John WILSON for the months of June and July. Affiant further attests that he has determined that the telephone located at the Tamarind Street location was 822-0833.

Pursuant to a search warrant dated November 4, 1976, served on Pacific Telephone Company, phone toll information was received showing a number of toll calls from the 822-0833 phone to a Riverside area number, 682-8056. Subscriber information obtained from the Criss-Cross Reference Dictory shows that the 682-8056 number is listed under the name of Sylvas John SCHLAX, 3403 Avalon Street, City of Riverside.

Affiant will further attest that phone toll information was obtained for telephone number 823-9426. This number was listed to the residence and the subject Frank John NYKIEL at 8587 Locust Street in Fontana; and it was determined from the phone toll information that from May through July 20th, a number of calls were made from the 823-9426 number to 682-8056, this being the residence of Sylvas John SCHLAX, 3043 Avalon Street, City of Riverside.

IDENTIFICATION OF SYLVAS JOHN SCHLAX & FRANK JOHN NYKIEL—L.A. CHEMICAL COMPANY:

Affiant will attest that on October 28, 1976, Det. Bob Higgins contacted Mr. Mannie Mendoza of L.A. Chemical Company, Downey, California, and displayed to Mr. Mendoza a number of photographs of suspects involved in this investigation. Mr. Mendoza selected the photograph depicted on drivers license #J477729, issued to Sylvas John SCHLAX and also selected a standard SBSO color mug photograph #45909, depicting the subject Frank John NYKIEL. Mr. Mendoza stated that the two subjects, Sylvas John SCHLAX and Frank John NYKIEL, had been together on at least two occasions between January of 1976, and July of 1976, at the L. A. Chemical Company purchasing chemicals.

RESIDENCE OF SYLVAS JOHN SCHLAX

Affiant will attest that on October 28, 1976, Det. Felix D'Amico and Sgt. Gene Bowlin of the Sheriff's Narcotics Division proceeded to the 3400 block of Avalon in the Riverside area; and on that day, aforementioned officers observed that the only residence in the 3400 block of Avalon was a residence located on top of a hill and surrounded by a 6′ high chain link fence. It was observed that there were no numbers identifying the property; however, from a vantage point located adjacent to the 3403 Avalon property, Det. D'Amico identified a male subject working in the rear yard area of the property as being the subject Sylvas John SCHLAX. Also observed from the same location was a number of military-type vehicles parked to the rear of the residence.

ADDITIONAL CORROBORATING INFORMATION:

The witnesses, Jo Anne ALLEN and Ruth BURK, both stated that they have observed Richard LUNSFORD and Celia CARNES purchasing quantities of amphetamines at the residence of Bud NYKEIL. Affiant attests that he has reviewed San Bernardino Sheriff's Department reports which show that in February of 1976, that the subject Richard LUNSFORD was arrested for possession of amphetamines and, further, that on May 28, 1976, Celia CARNES was arrested by Sheriff's Department personnel in possession of amphetamines for sale.

As a narcotics officer for the Sheriff's Department, County of San Bernardino, the affiant has participated in the investigation of at least six major narcotic-conspiracy cases; and this officer has found, through experience, that located within the residence of the suspected co-conspirators are documents evidencing the existence of a conspiracy. Such documents include telephone numbers of co-conspirators, correspondence between co-conspirators, maps showing specific locations, documents relating to drug transactions, and documents containing names of other co-conspirators.

The affiant attests that the above-contained information tends to show that a continuing conspiracy exists with the persons named in the affidavit to manufacture, distribute, and sell amphetamines, a controlled substance, in the County of San Bernardino, therefore showing a felony has been committed and is continuing to be committed in the County of San Bernardino, State of California.

I declare under penalty of perjury that the foregoing is true and correct.

And this complainant prays that a search warrant may be issued to search for the same, and that the same may be brought before a magistrate and disposed of according to law.

/s/ James M. Bryan
James Bryan

Subscribed and sworn to before me this 16th day of November 1976.

/s/ Pat Morgan
Judge of the Superior Court District
Central Division
County of San Bernardino
State of California